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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/942,872 | 08/30/2001 | Robert R. Wampler | 38190/233787 | 9504 |

826 7590 06/13/2005

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| EXAMINER |
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PEREZ DAPLE, AARON C

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| ART UNIT | PAPER NUMBER |
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2154

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/942,872

Applicant(s)

WAMPLER, ROBERT R.

Examiner

Aaron C. Perez-Daple

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-21.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
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On pages 2-4 of the Remarks filed 5/20/05, Applicant asserts that the Examiner presented a new basis of rejection in the Final Office Action mailed 4/1/05 and that the finality should therefore be withdrawn. The Examiner respectfully disagrees, finding that the changes to the 112, second paragraph, rejection were merely a clarification of what was presented previously in the non-Final Action mailed 7/19/04. Specifically, the non-Final Action found the entire phrase, "the electronic simulation information is otherwise capable of being used to verify operation of the at least one motion device produced by a set of operation information" to be unclear, and further stated that, "it is not clear in what capacity the electronic simulation is used to enable this simulation." The issues raised with respect to the term "otherwise" were made in response to Applicant's Remarks filed 10/19/04 in an effort to clarify the rejection. Therefore, the changes do not constitute a new basis of rejection, and the Action was properly made Final.

With respect to Applicant's assertions on pages 4-6 that the phrase "the electronic simulation information is otherwise capable of being used to verify operation of the at least one motion device produced by a set of operation information" does not render the claims unclear under 35 USC 112, second paragraph, the Examiner respectfully disagrees. The term "otherwise" implies an either/or situation. Based on Applicant's Remarks, however, it appears that "otherwise" should more properly recite --also--. That is, the limitation merely indicates an additional capability, and not a capability that exists to the exclusion of others.

On pages 6-8 of the Remarks, Applicant asserts that Taylor does not teach or suggest extracting process information from electronic simulation information, the process information thereafter being formatted, interpreted and distributed as operation information to control motion devices. More specifically, Applicant asserts that neither the MGDF file 80 nor the MGDF and spreadsheet programs and files, 60, 62, 64, 66, and 70, are capable of being used to verify operation of the motion devices and therefore cannot properly be interpreted as comprising the electronic simulation information. The Examiner respectfully disagrees. In particular, Applicant's attention is directed to col. 8, lines 37-56, which disclose that the control program generates the simulation using the data produced from the MGDF programs and files (as shown in Fig. 2). The claims merely recite that the electronic simulation information is "capable of being used to verify operation," and do not specify how the information is used. Nor even do the claims require that the information actually is used to perform such a verification, but only that the capability exists. It is clear from Taylor that the simulation/verification could not be accomplished without using the information stored in the spreadsheet and MGDF data files. Thus, Taylor properly anticipates this limitation of the claims under either interpretation presented by the Examiner in the Final Office Action.